

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion,	)	
to implement the provisions of Section 6s of	)	
2016 PA 341.	)	Case No. U-15896
_____	)	

At the March 28, 2017 meeting of the Michigan Public Service Commission in Lansing,  
Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman  
Hon. Norman J. Saari, Commissioner  
Hon. Rachael A. Eubanks, Commissioner

**ORDER AND NOTICE OF OPPORTUNITY TO COMMENT**

On December 21, 2016, Public Act 341 of 2016 (Act 341), an amendment to Public Act 3 of 1939 and Public Act 286 of 2008 (Act 286), was signed into law. Section 6s(1) of Act 341, MCL 460.6s(1), provides the option for a utility that seeks to add capacity to its system by construction, renovation, or long-term power purchase agreement to seek one or more certificates of necessity (CON) from the Commission. If a utility seeks a CON under this section, it must file an application with the Commission, along with an integrated resource plan (IRP), unless the utility has an approved IRP as set forth in MCL 460.6t.

On December 23, 2008, pursuant to Act 286, the Commission adopted standard application filing forms and instructions for use in all CON requests. Section 6s(10) of Act 341 provides that the Commission "shall adopt standard application filing forms and instructions for use in all requests for a certificate of necessity . . . . The commission may modify the standard application

filing forms and instructions adopted under this section.” The Commission drafted proposed changes to the procedures adopted on December 23, 2008, attached to this order as Attachment A, to conform to the above-referenced CON provisions in Act 341. To facilitate this process, the Commission seeks input from all interested persons on the proposed changes. All comments and recommendations for these procedures should be consistent with the provisions of Section 6s of Act 341.

Any person may submit written or electronic comments regarding the provisions of Section 6s of Act 341. Comments must be filed with the Commission and must be received no later than 5:00 p.m. on April 14, 2017. Written comments should be sent to: Executive Secretary, Michigan Public Service Commission, P.O. Box 30221, Lansing, MI 48909. Electronic comments may be e-mailed to [mpscedockets@michigan.gov](mailto:mpscedockets@michigan.gov). All comments should reference Case No. U-15896. All information submitted to the Commission in this matter will become public information available on the Commission’s website and subject to disclosure.

THEREFORE, IT IS ORDERED that interested parties may file written or electronic comments on the procedures to be adopted by the Commission pursuant to Section 6s of 2016 PA 341 regarding the standard application filing forms and instructions for use in all requests for a certificate of necessity. The comments must be received no later than 5:00 p.m. on April 14, 2017.

The Commission reserves jurisdiction and may issue further orders as necessary.

MICHIGAN PUBLIC SERVICE COMMISSION

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Sally A. Talberg, Chairman

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Norman J. Saari, Commissioner

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Rachael A. Eubanks, Commissioner

By its action of March 28, 2017.

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Kavita Kale, Executive Secretary

**Attachment A**  
**Michigan Public Service Commission**  
**2008 PA 286-2016 PA 341**

**Filing Requirements and Instructions for Certificate of Public  
Convenience and Necessity Application Instructions**

Application Instructions for Certificate Necessity

These filing instructions apply to an electric utility application for a certificate of necessity under the provisions of MCL 460.6s. The application shall be consistent with these instructions, with each item labeled as set forth below. Any additional information considered relevant by the applicant may also be included in the application.

**Pre-application Consultation Process**

Prior to filing the application for a certificate of necessity, a pre-application consultation with the Commission Staff (Staff) is necessary. The purpose of the pre-application consultation is to assist the applicants in refining the project application, and to facilitate efficient regulatory review. Applicants should schedule pre-application consultation meetings with the Staff well in advance of filing an application with the Commission. The Staff recognizes that all projects are not the same and that the information needed for one project will not necessarily be appropriate for the next. For some projects, a complete application may require less information than for other projects. For this reason, a pre-application consultation with the Staff is important. Early in the consultation process, the Staff will identify Staff contacts, and clarify the applicability of information requirements for the specific application.

**I. Applicant Information**

All applications shall contain the following information about the applicant utility:

1. The name and address of the applicant utility seeking the certificate of necessity; and
2. A description of the applicant utility, and the name, title, and business address of a person to whom correspondence should be directed.

**II. Alternate Standards and Criteria for Certain Projects**

An electric utility with more than one million retail customers in this state seeking a certificate of necessity for a project costing more than ~~\$500~~ **\$100** million shall follow these instructions. An electric utility with less than one million retail customers in this state seeking a certificate of necessity for a project costing less than ~~\$500~~ **\$100** million may propose different review criteria

and approval standards in its application, under MCL 460.6s(2), including modification or waiver of these instructions for good cause shown. The justification for any such proposals shall be addressed in the application. Project cost estimates submitted with the certificate of necessity application do not require final bidding and contracts for project engineering, procurement and construction. Project cost estimates may include cost estimates developed in an alternative manner, along with a proposed contract strategy for project development and implementation.

### **III. Confidential Information**

Proprietary, confidential, and other nonpublic materials filed as part of the application shall be clearly identified and marked accordingly and presented in such a way that the proprietary and confidential nature of the materials is preserved pending the execution of any confidentiality agreements and issuance of protective orders. Availability of specific materials in the application may be contingent upon appropriate confidentiality agreements and protective orders.

### **IV. Integrated Resource Plan**

An integrated resource plan, as required by MCL 460.6s(11), shall be included as an exhibit to the certificate of necessity application. The plan shall include the items listed in MCL 460.6s(11) and otherwise comply with the Commission's standards developed under that section. **This subsection does not apply to an electric utility that has an approved integrated resource plan under MCL 460.6t.**

### **V. Certificate of Necessity Type**

The certificate of necessity application shall identify the relief requested. An electric utility may seek one or more of the following certificates as described in MCL 460.6s(3):

- A certificate that the power to be supplied as a result of the proposed construction, investment, or purchase is needed;
- A certificate that the size, fuel type, and other design characteristics of the existing or proposed electric generation facility or the terms of the power purchase agreement represent the most reasonable and prudent means of meeting that power need;
- A certificate that the price specified in the power purchase agreement will be recovered in rates from the electric utility's customers;
- A certificate that the estimated purchase or capital costs of, and the financing plan for, the existing or proposed electric generation facility, including, but not limited to, the costs of siting and licensing a new facility and the estimated cost of power from the new or proposed electric generation facility, will be recoverable in rates from the electric utility's customers **subject to MCL 460.6s(4)(c).**

## **VI. Certificate of Necessity That the Power to Be Supplied as a Result of the Proposed Construction, Investment, or Purchase Is Needed**

A utility seeking a certificate of necessity that the power to be supplied as a result of the proposed construction, investment, or purchase is needed shall file an application that identifies projected resource requirements, **and** the expected timing of the requirements. **The applicant shall either have an approved integrated resource plan, as specified in MCL 460.6t, or file, as a part of their application, an ~~along with an~~ integrated resource plan that is consistent with MCL 460.6s(11) and** that identifies a proposed course of action.

## **VII. Certificate of Necessity That the Design Characteristics of a Proposed Electric Generation Facility or Investment in an Existing Electric Generation Facility or the Terms of a Power Purchase Agreement Represent the Most Reasonable and Prudent Means of Meeting Future Power Needs**

An application seeking a certificate of necessity to construct a new electric generation facility or to make a significant investment in an existing facility or enter into a power purchase agreement shall include the following information:

### **A. New or Existing Electric Generation Facility:**

1. A written description of the proposed or existing site, including identification of the municipality in which the facility will be constructed and the current use of that site;
2. If applicable, the age of the existing facility or facilities to be purchased or modified;
3. Expected generating technology and major systems (including major pollution control systems);
4. Expected nameplate capacity, availability, heat rates, expected life, and other significant operational characteristics;
5. Fuel type and sources, including the identification and justification of fuel forecasts used over the study period;
6. Discussion of the rationale behind facility or investment technology, fuel, capacity, and other significant design characteristics;
7. A description of all major state, federal, and local permits required to construct and operate the proposed generation facility or the proposed facility upgrades in compliance with state and federal environmental standards, laws, and rules;

8. If applicable, the status of any transmission interconnection study and identification of any expected or required transmission system modifications;
9. If applicable, natural gas infrastructure required for plant construction and operation not located on the proposed site but required for plant construction and operation;
10. If applicable, a description of modifications to existing road, rail, or waterway transportation facilities not located on the proposed site but required for plant construction and operation;
11. If applicable, water and sewer infrastructure required for construction and operation not located on the proposed site but required for plant construction and operation;
12. A basic schedule for development and construction, which include an estimated time between the start of construction and commercial operation of the facility or facility upgrades;
13. An estimate of the proportion of the construction workforce that will be composed of residents of the state of Michigan;
14. Descriptions of the supply alternatives to this proposal that were considered, including a “no-build” option, and ~~present~~ the justification for the choice of the proposed project. Comparative costs of supply alternatives shall be included. The supply alternatives shall consider energy optimization and renewable energy;
15. Describe the effect of the proposed project on wholesale market competition; and
16. Any other information that the applicant considers relevant.

**B. Power Purchase Agreement:**

1. If applicable, a written description of generation facilities covered by the power purchase agreement, the size of each facility, generator technology and fuel type, and the location of the generation facilities, including identification of the municipalities in which the facilities are located;
2. The name and address of the power provider supplying contract products and services under the power purchase agreement;
3. For power purchase agreements that are the result of a competitive solicitation, the following shall be included in the certificate of necessity application:

- a) A copy of the request for proposal (RFP) for electric capacity and a description of how the request was issued to potential respondents;
  - b) Copies of responses to the RFP. Responses submitted as part of a certificate of necessity application may be presented in such a way that the identities of the respondents and other commercially sensitive information is protected; and
  - c) A description of the proposal selection process.
- 4. The date the resources covered by the power purchase agreement will be available, the term of the power purchase agreement, and a description of significant contract provisions that could result in early termination of the contract;
  - 5. The price to be paid for contract products and services delivered under the power purchase agreement;
  - 6. A copy of the proposed power purchase agreement.

**VIII. Certificate of Necessity That the Estimated Capital or Purchase Costs of the New or Existing Electric Generation Facility or the Investment in an Existing Electric Generation Facility Will Be Recoverable in Rates From the Electric Utility's Customers**

An application seeking a certificate of necessity to construct a new electric generation facility, to make a significant investment in an existing electric generation facility, or to purchase an existing electric generation facility shall provide an estimate of the costs required for the specified purchase or construction, as well as projected facility operation costs. Cost estimates filed with the certificate of necessity application shall include:

**A. Construction of New Facility or Investment in Existing Facility:**

- 1. To the extent applicable and available, engineering, procurement and construction costs, transmission interconnection costs, owner's costs, and project financing costs shall be included. Estimates filed with the application that are the result of competitively-bid engineering and procurement and construction contracts shall be separately identified. If the scope, scale, timing, or other aspects of the project, including legislative or regulatory uncertainty, make competitively-bid solicitations unlikely to produce reliable or timely project cost estimates, the application shall include cost estimates developed in an alternative manner, along with a proposed contract strategy for project development and implementation.



2. For new construction, the certificate of necessity application shall include the expected typical annual costs associated with operating the facility including fuel, operations and maintenance, and environmental compliance.

3. For investment and upgrades at an existing facility, the certificate of necessity application shall include an estimate of the incremental operating costs for the facility after upgrades are complete including fuel, operations and maintenance, and environmental compliance.

4. To the extent applicable, the certificate of necessity application shall describe any definitive joint ownership plans for the proposed generation facility assets and the impact such plans will have on the costs for which a certificate of necessity is requested. For the purposes of a certificate of necessity application, changes in allocated costs among joint owners shall be considered an aspect of the estimated cost included in the filing.

**B. Purchase of Existing Facility:**

1. As applicable, the estimated costs associated with purchasing the existing facility assets including the price to be paid for the assets, acquisition and transition costs, financing costs, and any significant financial liabilities that will accompany the asset transfer; and

2. The expected typical annual costs associated with operating the generation facility including fuel, operations and maintenance, and environmental compliance.

**IX. Certificate of Necessity That the Price Specified in the Power Purchase Agreement Will Be Recovered in Rates From the Electric Utility's Customers**

A utility seeking rate recovery for future payments made pursuant to a power purchase agreement shall file a certificate of necessity application providing an estimate of the payments to be made for contract products and services pursuant to the agreement. The estimated payments shall be presented on a yearly basis in nominal dollars over the primary term of the contract.